

N.D.A.G. Letter to Sanstead (Sep. 14, 1988)

September 14, 1988

Dr. Wayne G. Sanstead
Superintendent of Public Instruction
State Capitol
Bismarck, ND 58505

RE: Your Letter Dated August 29, 1988

Dear Dr. Sanstead:

Thank you for your letter dated August 29, 1988. You ask whether the waiver provision in N.D.C.C. § 15-41-26 compels you to adopt waiver procedures and criteria for the approval conditions contained in N.D.C.C. §§ 15-41-24 and 15-41-25.

In reviewing the law on this subject, I observed that N.D.C.C. §§ 15-41-24 and 15-41-25 were amended in 1979 to delete the word "accreditation" and substitute the word "approval." However, N.D.C.C. § 15-41-26 was not amended and contains the word "accreditation." The distinction between the words accreditation and approval was prompted by an amendment to N.D.C.C. § 15-34.1-03(1), which provides that a school board may excuse the attendance of a child whenever the child is in attendance at a parochial or private school approved by the county superintendent of schools and the superintendent of public instruction. In order to achieve the status of an approved school, the teachers at the school and the curriculum taught at the school must meet the standards specified by N.D.C.C. §§ 15-41-24 and 15-41-25. Accreditation, on the other hand, is voluntary and involves standards higher than those necessary for approval. State law does not require students to be taught in accredited schools.

N.D.C.C. § 15-41-26 is patently ambiguous because it refers to waivers of conditions for accreditation in N.D.C.C. §§ 15-41-24 and 15-41-25 despite the fact that those statutes contain no conditions for accreditation. Pursuant to N.D.C.C. § 1-02-40, a reference to any portion of a statute applies to all amendments of the statute. Thus, the statutory reference in N.D.C.C. § 15-41-26 to "accreditation" clearly conflicts with the amendments to N.D.C.C. §§ 15-41-24 and 15-41-25.

In construing ambiguous statutes, N.D.C.C. § 1-02-39 authorizes a court to consider the object of a statute as well as the consequences of a particular construction. By applying these aids in statutory construction, it is apparent that the legislature intended to authorize waivers of conditions for approval in N.D.C.C. §§ 15-41-24 and 15-41-25. The object of N.D.C.C. § 15-41-26 is the waiver of conditions contained in N.D.C.C. §§ 15-41-24 and 15-41-25. The consequences of a different construction of N.D.C.C. § 15-41-26 would render meaningless N.D.C.C. § 15-41-26 and would cause absurd results.

I must conclude that the Superintendent of Public Instruction has the authority to waive conditions for approval of public or private high schools. However, N.D.C.C. § 15-41-26 is not mandatory in its authorization but simply allows you to grant waivers if supported by "due cause." In short, you may but you are not compelled by N.D.C.C. § 15-41-26 to adopt waiver procedures and criteria.

Should you decide to adopt approval procedures and criteria, the administrative agencies practices act applies to rules prescribed under N.D.C.C. § 15-21-07, rules relating to teacher certification, and rules relating to professional codes and standards approved under N.D.C.C. § 15-38-18.

Regarding the criteria you decide to implement in the waiver process, I defer to your expertise on issues of this nature but I would note that the legislative assemblies in each of the last several sessions have declined the invitation to relax the standards for approval of schools in North Dakota.

Sincerely,

Nicholas J. Spaeth

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